

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b))

Description of Case

Crl. Appeal No. 318 of 2001

Date of decision:- 15-6-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Initials of Judge

Date:- 15-6-2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

**CRIMINAL APPEAL NO. 318 of 2001
(Old No. 2180 of 1985)**

Chandra Singh
S/o Badar Singh
R/o village Junar
P.S. Narayan Bagrah
District Chamoli Appellant

Versus

State of Uttaranchal Respondent

Date:- 15th June, 2006

Mr. Pramod Tiwari learned Amicus Curiae for the appellant.
Mr. Lalit Verma and Sri Rajeev Mohan learned AGA for the State.

Hon'ble J.C.S. Rawat, J.

1. This is a criminal appeal against the judgment and order dated 07.08.1985 passed by the Sessions Judge, Chamoli in Special Trial No. 1/1985 State Vs. Chandra Singh, whereby the appellant was convicted and sentenced to undergo R.I. for a period of one year and to pay fine of Rs. 2000/- under section 3/7 of the Essential Commodities Act. In default of payment of fine, the appellant to undergo for further three months R.I.

2. Brief facts of the prosecution case are that on 14.11.1984 the Supervisor Kanoongo, Narayan Bagarh filed a complaint before the Patwari, Narayan Bagarh with the allegations that under the orders of S.D.M. Karanprayag he went to check the shop of appellant because there was a complaint against the appellant that he was selling kerosene oil without any licence. The Supervisor Kanoongo went to the shop of the appellant and found a person going away with a bottle containing kerosene. On being made the search the

shop, he found 28 litres of kerosene stocked in the shop in three different pots. One was a 20 litres can (container), one was 5 litres can and the remaining oil was in a plastic bucket in which there was 'kuppi' to pore the oil and there was also a measure of one litre in the bucket. It was further alleged that the appellant had no licence to sell the kerosene oil and he ran away as soon as the raiding party reached at his shop. The said articles were seized and a fard was prepared. A report of the seizure was made to the Patwari and the seized articles were handed over to him. When it was revealed that the shop is situated in the police area, the matter was handed over to the police station Karanprayag. The investigation was taken up as usual which culminated into the submission of the chargesheet. After submission of chargesheet the accused was committed to the Court of Sessions for trial and the trial court framed charges against the appellant. The appellant denied the charge levelled against him and claimed the trial.

3. The prosecution in order to support its case examined as many as six witnesses. Umrao Singh (PW1) was the Supervisor Kanoongo at Narayan Bagarh and he inspected the shop of the appellant and seized the kerosene oil. He filed the complaint before the Patwari against the appellant. Mathura Prasad (PW2) had a shop in front of the appellant's shop. He admitted that the peon of Kanoongo took him to the shop of the appellant and he was the witness of recovery of kerosene oil. Balwant Singh (PW3), peon has stated that under the orders of S.D.M., Kanoongo he was with the Kanoongo at the time of inspection of the shop of the appellant. The appellant ran away from

the shop as soon as he saw Kanoongo. He also supported the prosecution case. R. C. Misra (PW3) was the S.D.M., Karanprayag, who had supported the prosecution case that on 14.11.1984 he received a complaint that the appellant was selling kerosene oil without licence. He thereupon passed an order Ex.ka.1 authorising Kanoongo to raid the shop of the appellant. Saratu Lal (PW5) was the Investigating Officer, who submitted the chargesheet against the appellant.

4. In the statement recorded u/s 313 Cr.P.C. the accused appellant denied the prosecution case and stated that he has been falsely implicated in this case. The appellant had stated that he was under the pressure of toilet and as such he left the shop due to compelling reasons. On behalf of the appellant, DW1-Madho Singh has been produced. He tried to state that there was a marriage of his nephew on 24.11.1984 and in that connection he collected kerosene oil. He collected six ration cards of Dayai Singh, Jeet Singh, Bhawan Singh, Kedari Lal, Jamani Lal and his own, and took kerosene oil from the fair price shop. He kept the said kerosene oil in the shop of the appellant. In the cross examination he admitted that his house was near the shop of Chandra Singh-appellant. He stated that he had purchased the kerosene oil at 2 or 2:30 pm in the day and kept it in the shop of Chandra Singh-appellant so that he might take back his kerosene oil. Later on, he came to know that the same has been seized by the authorities.

5. The learned trial court after appraisal of the evidence on record convicted and sentenced the appellants as mentioned above.

6. I have heard the learned counsel for the parties and perused the evidence on record.

7. Learned Amicus Curiae for the appellant contended that the prosecution had not proved the case against the appellant beyond reasonable doubt and the appellant had been wrongly convicted by the trial court. Learned A.G.A. refuted the contention. In order to prove its case, the prosecution had examined Umrao Singh (PW1), who was the Supervisor Kanoongo at Narayan Bagarh and he filed the complaint before the Patwari against the appellant. He had stated in his evidence that under the orders of S.D.M. Karanprayag he went to raid the shop of appellant because there was a complaint against him that he was selling kerosene oil without any licence. When PW1-Kanoongo went to the shop he found a person coming away with a bottle containing kerosene. As soon as the Kanoongo and his peon Balwant Singh entered the shop of the appellant, the appellant left the shop and ran away. Thereafter, They called the witnesses from the nearby shops. Balwant Singh, peon brought two shopkeepers i.e. Kalyan Singh and Mathura Prasad and the search was made in their presence. On being made the search the shop, he found 28 litres of kerosene stocked in the shop in three different pots. One was a 20 litres can (container), one was 5 litres can and the remaining oil was in a plastic bucket in which there was 'kuppi' to pore the oil and there was also a measure of one litre in the bucket. PW1-Kanoongo had further stated that the said articles were seized and a fard was prepared. A report of the seizure was made to the Patwari and the seized articles were handed over to

him. The prosecution had also produced the evidence of PW3-Balwant Singh, peon. PW3-Balwant Singh, who was the peon of Kanoongo, has fully supported the prosecution case. The evidence of PW3 Balwant Singh further corroborates the testimony of the Kanoongo. The prosecution had also adduced the evidence of R.C. Misra (PW4), who was the then S.D.M., Karanprayag. He had stated that on 14.11.1984 when he reached Narayn Bagarh he received a complaint that the shopkeeper-Chandra Singh (appellant) was selling kerosene oil without licence. R.C. Misra PW4 further stated that after receiving the complaint he passed an order Kx.ka.1 authorising Kanoongo to raid the shop of Chandra Singh-appellant.

8. Learned Amicus Curiae for the appellant contended that there is a contradiction in between the evidence of PW1-Umrao Singh and PW3-Balwant Singh. Umrao Singh-PW1 had stated in his evidence that he saw a person coming out from the shop of the appellant with the kerosene oil and he could not apprehend him. He had stated in the cross examination that he had a tin container in his hand. Whereas Balwant Singh PW3 had stated that he saw a person coming out with a bottle containing kerosene oil. It was pointed out that there was a distance of 15 metres from where the prosecution witnesses had seen the person going with the kerosene bottle and they could not apprehend him. I have gone through the entire evidence. These discrepancies do not disturb the genesis of the story. The discrepancies as pointed out by the learned Amicus Curiae for the appellant are not of any consequences. There are bound to be some discrepancies between the narrations of different

witnesses when they speak on details, and unless the contradiction are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. The discrepancies as pointed out by the defence are of no consequence.

9. Mathura Prasad (PW2), whose shop was just opposite to the shop of the appellant, admitted that the peon of Kanoongo took him to the shop of appellant. who had a shop in front of the appellant's shop. He admitted that the peon of Kanoongo took him to the shop of the appellant. He was the witness of the raid conducted by the Kanoongo. He stated that the kerosene oil was found in the jerican and one plastic bucket. There was a measure of one litre and a kuppi in the plastic bucket. He had put a different version in the evidence and he informed to the Kanoongo that the said kerosene oil belonged to Madho Singh DW1. The evidence of Mathura Prasad (PW2) is contrary to the evidence of the appellant recorded under section 313 Cr.P.C. The appellant had stated in his statement recorded under section 313 Cr.P.C. that he was under the pressure of toilet (latrin) and he immediately had left the shop when Kanoongo reached there. If the accused himself is admitting that he had left the shop when Kanoongo came there, there is no question of presence of the appellant at the spot. The statement of the present witness-Mathura Prasad (PW2) supports the prosecution case in other aspects. He had also

supported the prosecution with regard to the recovery of kerosene oil from the shop of the appellant. Mathura Prasad (PW2) was the neighbour of the appellant and he tried to help him in the cross examination. But while adducing the evidence he had forgotten what the appellant had stated to him he is contradicting the version of the appellant. PW1-Umrao Singh and PW2-Balwant Singh are concerned, the evidence of both the witnesses is cogent and reliable. Nothing could be elicited from their cross examination to disbelieve their testimony. They had categorically stated that 28 litres of kerosene oil was recovered from the shop of appellant and this kerosene oil was kept in three containers namely a big jerican, a small jerican and a plastic bucket. A kuppi and a measure of one litre were also lying inside the shop of the appellant. They had also seen a person taking kerosene oil from the shop of the appellant. Both the witnesses had stated that when the appellant saw them he fled away from his shop. They could not apprehend him.

10. The evidence of PW2 Mathura Prasad reveals that he was present at the time of recovery of kerosene oil and other articles i.e. kuppi, plastic bucket and measure. PW2 Mathura Prasad had supported the prosecution version only to that extent. Meaning thereby, he tried to help the appellant by saying that the appellant has already stated to the Kanoongo at the shop that the recovered kerosene oil belongs to one-Madho Singh and the appellant was only a custodian of the same. The appellant had stated in his first statement under section 313 Cr.P.C. that as soon as Kanoongo came to the shop he left the shop and did not return till Kanoongo left the shop. Therefore, the

trial court had rightly held that PW2 Mathura Prasad told Kanoongo at the shop that the kerosene oil belonged to Madho Singh does not arise at all. It is admitted that he being the neighbour of the appellant was trying to help him by introducing a new story.

11. It was further contended that the kerosene oil did not belong to the appellant and it was belonged to one-Madho Singh-DW1, who had kept the kerosene oil in the shop of the appellant. It was further pointed out that the appellant had adduced the evidence of DW1-Madho Singh, who had also submitted the documentary evidence of ration cards. He tried to state that there was a marriage of his nephew on 24.11.1984 and in that connection he collected kerosene oil. He collected six ration cards and he purchased 5 litres of kerosene oil in each cards. Thus, the total comes to 30 litres. It is also in his evidence that he took 5 litres of kerosene oil to his house out of 30 litres. He had given explanation for not taking the kerosene oil to his house that he had to attend the marriage of his nephew. If he could have taken 5 litres kerosene oil to his house, he could have taken the entire 30 litres of kerosene oil to his house on the day when he purchased the oil. This explanation does not reason to believe to me. It is also in the evidence of Madho Singh DW1 that he kept 25 litres of kerosene oil in two jericans. However, it is evident from the evidence that the recovery of two jericans and one plastic bucket containing kerosene oil was found at the spot. Madho Singh-DW1 had further stated in his evidence that he kept 25 litres of kerosene in the shop of appellant, but there was a recovery of 28 litres of kerosene oil from the shop of the appellant. If Madho Singh-DW1 had kept the kerosene oil in the

shop of appellant as custodian then as to why the appellant had kept the measure of one litre and one kuppi alongwith the plastic bucket of kerosene oil in his shop.

12. The measure and kuppi was recovered from the shop of the appellant. This circumstance leads to the guilt of the appellant. During the time of questioning under section 313 Cr.P.C. the appellant instead of making at least an attempt to explain and clarify the incriminating circumstances inculcating him, and connection him with the crime by his adamant attitude of denial when this circumstance was brought to his notice by the trial court not only lost the opportunity but stood self-condemned. Such incriminating link of fact could, if at all, had been only explained by the appellant, and by nobody else, he being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to the trial court, when questioned, found the missing link to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed.

13. The other incriminating circumstance which leads to the guilt of the appellant is that there is evidence on record that when the raiding party entered into the shop of the appellant he left the shop and ran away from the spot. Thereafter, the witnesses were called from the nearby shop. PW1 Umrao Singh and PW3 Balwant Singh have stated this fact. The appellant had also stated in his statement recorded under section 313 Cr.P.C. that he was under pressure of toilet and as

such he left the shop due to the compelling reasons. It is not disputed that the appellant was not present at the relevant time. Thus, the act of leaving the shop at the time of raid leads to take inference that he intentionally avoided the search in his presence because he was aware about the fact that he was having the unlicensed kerosene oil for sale in his shop. This incriminating circumstance against the appellant cannot be sidelined.

14. Learned Amicus Curiae for the appellant further contended that the trial court has awarded the sentence of one year to the appellant which is a maximum sentence under section 3/7 of the E.C. Act. It was further submitted that a lenient view may be taken with regard to the sentence. It was submitted that the appellant was about 64 years of age at the time of incident and now he is aged about 85 years. Learned Amicus Curiae for the appellant has also referred the bail order of the applicant passed by the Sessions Judge. The conviction has been hanging upon the head of the appellant since 1985 and he is under pressure of the conviction since then. Only 28 litres of kerosene oil was recovered from his possession.

15. Considering the age of the appellant, the nature of offence, the quantity of kerosene oil recovered from his possession and circumstances of the case, I am of view that ends of justice would be met if the sentence is further modified and reduced to three months under section 3/7 E.C. Act instead of one year.

16. The appeal is partly allowed. Conviction of the appellant under section 3/7 E.C. Act is affirmed. The

sentence is reduced to three months under section 3/7 of E.C. Act. So far as the sentence regarding the fine of Rs.2000 is concerned, the same is affirmed.

17. Let the record be sent back to the court concerned for compliance and report to be submitted within two months.

(J.C.S. Rawat, J.)

Dated: 15.06.2006
LSR